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Aura Boykin

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

Aura Boykin,

Plaintiff,

v.

Wells Fargo Bank, National Association,
and DOES 1 through 100 inclusive,

Defendants.

CASE NO.

PLAINTIFF’S COMPLAINT FOR DAMAGES:

1. Violation of the Rosenthal Fair Debt Collection Practices Act
2. Violation of the Telephone Consumer Protection Act

COMES NOW Plaintiff Aura Boykin, an individual, based on information and belief, to allege as follows:

INTRODUCTION

1. This is an action for damages brought by an individual consumer for Defendant’s violations of the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788, *et seq.* (hereinafter “Rosenthal Act”), which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices and violation of the Telephone Consumer Protection Act 47 U.S.C. §227, *et seq.* (hereinafter “TCPA”), which prohibits the use of automated dialing equipment when making calls to consumers.

(a)(1) The banking and credit system and grantors of credit to consumers are dependent upon the collection of just and owing debts. Unfair or deceptive collection practices undermine the public confidence which is essential to the continued functioning of the banking and credit system and sound extensions of credit to consumers.

(b) It is the purpose of this title to prohibit debt collectors from engaging in unfair or deceptive acts or practices in the collection of consumer debts and to require debtors to act fairly in entering into and honoring such debts, as specified in this title.

5. The TCPA was designed to prevent calls like the ones described herein, and to protect the privacy of citizens like Plaintiff, and by enacting the TCPA, Congress intended to give consumers a choice as to how corporate entities may contact them and to prevent the nuisance associated with automated or prerecorded calls.

6. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1337, and 1367, and 47 U.S.C. § 227.

8. Plaintiff Aura Boykin (hereinafter “Plaintiff”) is an individual residing in the state of California, and is a “debtor” as defined by Cal. Civ. Code §1788.2(g).

2

1 10. At all relevant times, Defendant acted as a “debt collector” within the meaning of Cal.
2 Civ. Code §1788.2(c)

3 11. Plaintiff had taken out an unsecured loan with Wells Fargo on or about October of
4 2012.

5 12. The loan Plaintiff took from Defendant Wells Fargo was extended primarily for
6 personal, family or household purposes and is therefore a “debt” as that terms is defined by the
7 Calif. Civil Code § 1788.2(d) of the Rosenthal Act.

8 13. Defendant Wells Fargo has been attempting to collect on a debt that originated from
9 monetary credit that was extended primarily for personal, family, or household purposes, and
10 was therefore a “consumer credit transaction” within the meaning of Calif. Civil Code §
11 1788.2(3) of the Rosenthal Act.

12 14. Because Plaintiff, a natural person allegedly obligated to pay money to Defendant
13 Wells Fargo arising from what Plaintiff is informed and believes was a consumer credit
14 transaction, the money allegedly owed was a “consumer debt” within the meaning of
15 California Civil Code § 1788.2(f) of the Rosenthal Act.

16 15. Plaintiff is informed and believes that Defendant is one who regularly collects or
17 attempts to collect debts on behalf of themselves, and is therefore a “debt collector” within the
18 meaning of the Calif. Civil Code § 1788.2(c) of the Rosenthal Act, and thereby engages in
19 “debt collection” within the meaning of the California Civil Code § 1788.2(b) of the Rosenthal
20 Act, and is also therefore a “person” within the meaning of California Civil Code § 1788.2(g)
21 of the Rosenthal Act.

22 16. Plaintiff’s account was an unsecured loan and Plaintiff began making payments on the
23 accounts.

24 17. Plaintiff began making payments on the loan before she became financially unable to
25 keep up with the monthly payments.

26 18. Defendant Wells Fargo began contacting Plaintiff in March of 2017 to inquire about
27 the status of the loan and to collect on the payments that were no longer being made.

28 19. Plaintiff retained counsel to assist in dealing with Wells Fargo debt and to seek some
type of financial relief.

1 20. Counsel for Plaintiff sent Defendant Wells Fargo a letter confirming representation of
2 Plaintiff and that Defendant was to no longer contact Plaintiff directly and that all
3 calls/letters/collection efforts were to no longer be directed at Plaintiff.

4 21. Counsel for Plaintiff sent the letter of representation to Wells Fargo on or about April
5 14, 2017.

6 22. Plaintiff, through counsel, informed Wells Fargo that she was revoking her consent, if
7 it was ever previously given, to be called on her telephone in April 2017.

8 23. Plaintiff denies she ever gave her express consent to be contacted on her cellular
9 telephone by automatic dialing machines and pre-recorded messages.

10 24. Defendant Wells Fargo continued to contact Plaintiff between approximately April 14
11 2017 – at least July 29, 2017; the type of contact was through phone calls to Plaintiff on her
12 cellular telephone.

13 25. Despite the notice being sent, Defendant continued to contact Plaintiff on her cellular
14 telephone regarding collection of her outstanding debt.

15 26. Plaintiff was contacted frequently regarding non-payment of the debt owed to Wells
16 Fargo despite Wells Fargo being notified, on two separate occasions, that Plaintiff had retained
17 counsel to deal specifically with the debt owed to Wells Fargo.

18 27. Wells Fargo's calls were frequent in nature and continued despite receiving written
19 confirmation that Plaintiff was represented by an attorney.

20 28. In addition to calling Plaintiff's cellular telephonic from an automatic dialing machine,
21 Wells Fargo sent numerous text messages to Plaintiff's cellular telephone after notice of the
22 representation as received.

23 **FIRST CAUSE OF ACTION**
24 (Violation of the Rosenthal Act)
25 (Cal. Civ. Code §§ 1788-1788.32)
26 (Against Defendant and Does 1-100)

27 29. Plaintiff realleges and incorporates herein the allegation in each and every paragraph
28 above as though fully set forth herein.

30. Plaintiff provided written notice that she was represented by sending Defendant a letter
with the name, address, and contact information of her attorney and informed Defendant that she
was represented.

1 31. Defendant continued to call and attempt to make contact with Plaintiff despite receiving
2 notice of representation and being informed that Plaintiff had retained counsel in an effort to deal
3 with the debt that was owed to Defendant.

4 32. The calls and communications made by Defendant to Plaintiff were not related to
5 statements of Plaintiff's account and were attempts to collect a debt.

6 33. Plaintiff received frequent calls from Wells Fargo from at least April 14, 2017 – July 29,
7 2017.

8 34. Plaintiff also received at least three text messages from Wells Fargo related to collection
9 activity for her Wells Fargo account.

10 35. Defendant violated Cal. Civ. Code §1788.14 by contacting Plaintiff after receiving
11 noticed that Plaintiff had retained an attorney.

12 36. Defendant received two separate notices regarding Plaintiff's retention of counsel but
13 continued to contact Plaintiff.

14 **SECOND CAUSE OF ACTION**

15 (Violation of the TCPA)

16 (47 USC § 227)

17 (Against Defendant and Does 1-100)

18 37. Plaintiff realleges and incorporates herein the allegation in each and every paragraph
19 above as though fully set forth herein.

20 38. Since at least about April of 2017 Defendant started calling Plaintiff's cellular
21 telephone requesting that payment be made on the accounts Plaintiff held with Defendant.

22 39. Plaintiff informed Defendant that she was revoking consent to be contacted by Wells
23 Fargo in early April of 2017.

24 40. Wells Fargo continued to call Plaintiff frequently since Plaintiff withdrew her consent
25 to be contacted by an automatic dialing machine.

26 41. Defendant would contact Plaintiff frequently each day regarding payment on the
27 accounts.

28 42. Defendant placed the above cited calls using an artificial or prerecorded voice to deliver
the collection messages without Plaintiff's prior express consent.

43. Defendant contacted Plaintiff on at least 63 (sixty three) separate occasions after
Plaintiff informed Defendant she did not wish to be contacted on her cellular telephone and
withdrew any prior consent that may have been given.

44. All calls placed by Defendant to Plaintiff utilized an “automatic telephone dialing system” as defined by 47 U.S.C. §227(a)(1).

45. These calls were made to Plaintiff’s cellular telephone and were not calls for an emergency purposed as defined by 47 U.S.C. §227(b)(1)(B).

46. Plaintiff also received at least 3 (three) text messages from Wells Fargo after consent was revoked.

47. These telephone calls by Defendant, or its agent, violated 47 U.S.C. §227(b)(1)(B).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

- a. An award of actual damages pursuant to California Civil Code §1788.30(a), as will be proven at trial, which are cumulative and in addition to all other remedies provided for in any other cause of action pursuant to California Civil Code §1788.32.
- b. An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code §1788.30(b), which are cumulative and in addition to all other remedies provided for in California Civil Code §1788.32; and
- c. An award of costs of litigation and reasonable attorney’s fees pursuant to Cal. Civ. Code §1788.30(c).
- d. An award of statutory damages of \$1,500.00 pursuant to 47 U.S.C. §227(b)(3)(C) for each and every violation.
- e. Pursuant to 47 U.S.C. §227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- f. Pursuant to 15 U.S.C. 1692(k) both actual damages and statutory damages in an amount to be proven at trial.

Dated: November 14, 2017

SAGARIA LAW, P.C.
By: /s/ Scott Johnson
Scott Sagaria, Esq.
Scott Johnson, Esq.
Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of this matter by jury.

Dated: November 14, 2017

SAGARIA LAW, P.C.

/s/ Scott Johnson

Scott Sagaria, Esq.

Scott Johnson, Esq.

Attorneys for Plaintiff